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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,453	04/20/2004	Raymond R. Gosselin	58032US010	3998

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EXAMINER

NORDMEYER, PATRICIA L

ART UNIT	PAPER NUMBER
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1794

NOTIFICATION DATE	DELIVERY MODE
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11/21/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

LegalUSDocketing@mmm.com
LegalDocketing@mmm.com

Office Action Summary

Application No.

10/828,453

Applicant(s)

GOSSELIN, RAYMOND R.

Examiner

Patricia L. Nordmeyer

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 17, 2007 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1 – 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase “at least partially physically separated from the window upon application of the peeling force in a direction substantially away from the window” as in claims 1, 6, 12, 16 and 21 is unclear, which render the claims vague and indefinite. It is unclear what the Applicant is trying to claim, the tamper indicating device or the intermediate use of the tamper indicating device.

Claims 2 – 5, 7 – 11, 13 – 15, 17 – 20 and 22 – 28 are also rejected under 35 U.S.C. 112 2nd paragraph rejection due to their dependency on the above rejected claims.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3, 4, 6, 7, 10 – 13, 15, 16, 18, 19, 21, 22, 24 and 26 – 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright et al. (USPN 6,416,857) in view of Shadle et al. (USPN 6,270,122).

Wright et al. disclose a tamper indicating device (Column 1, lines 9 – 10) used in combination with an object having secured information (Column 9, lines 7 – 18) comprising a backing having a first side and a second side (Column 3, lines 15 – 16), wherein the backing comprises a first phase and a second phase (Column 3, lines 17 – 19), wherein the backing has a first level of light diffusion, and when a peeling force is applied to the backing, the backing fractures (Column 3, lines 32 – 38) and has a second level of light diffusion that is a higher level of light diffusion than the first level of light diffusion (Column 2, lines 27 – 31) a flood coat applied to the second side of the backing (Column 4, lines 53 – 56), an adhesive layer bonded to the flood coat (Column 5, lines 56 – 58) in claims 1, 3, 6, 7, 10, 14 16, 18, 21, 22 and 25.

Regarding claims 2, 5, 9, 13, 14, 17, 20, 23 and 24, the tamper indicating device further comprises at least one security marking applied to the first side of the backing (Column 4, lines 56 – 59). As in claims 4, 11, 15, 19 and 26, the adhesive layer is a pressure sensitive adhesive layer covered with a release liner (Column 5, lines 56 – 58). Wright et al. also disclose a tamper

Art Unit: 1794

indicating device used in combination with an object having secured information (Column 9, lines 7 – 18) comprising a backing having a first side and a second side (Column 3, lines 15 – 16), wherein the backing comprises a first phase and a second phase (Column 3, lines 17 – 19), wherein the backing is light transmissive, and when a peeling force is applied to the backing, the backing fractures (Column 3, lines 32 – 38) and become more opaque (Column 2, lines 27 – 31); an adhesive layer applied to the second side of the backing (Column 5, lines 56 – 58), wherein the adhesive is colored and bonded to the application surface of the object (Column 9, lines 37 – 42). With regard to claim 27, the peeling force is insufficient to separate the flood coat from the second side of the backing (Figure 3, #31A). As in claim 6, the adhesive is configured to attach the tamper indicating device to the object with a bond strength that enables the tamper indicating device to remain at least partially attached to the object upon application of the peeling force to separate the mask from the object (Figure 3, #16 and 50). However, Wright et al. fail to disclose the flood coat defining a window therein, a mask applied to the tamper indicating device, the mask is colored on the tamper indicating device by depositing it on a substrate, the mask is partially removed from the device by the clearing agents and the mask being in partial or whole registration with the window in the flood coat.

Shadle et al. teach an irreversible display (Figure 12, #110) having a flood coat defining a window therein (Figure 13, #118), a mask applied to the tamper indicating device (Figure 13, #120) and the mask being in partial or whole registration with the window in the flood coat (Figure 13, #118 and 120), wherein mask is colored on the tamper indicating device by depositing it on a substrate (Column 7, lines 36 – 30), and the mask is partially removed from the

Art Unit: 1794

device by the clearing agents (Column 8, line 7 to Column 9, line 8) for the purpose of having a display that temporarily obscuring predetermined indicia from view (Column 1, lines 44 – 45)

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the flood coat layer with a window covered by a masking layer in Wright et al. in order to have having a display that temporarily obscuring predetermined indicia from view as taught by Shadle et al.

With regard to the limitation of "at least partially physically separated from the window upon application of the peeling force in a direction substantially away from the window", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art.

6. Claims 2, 5, 8, 9, 14, 17, 20, 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright et al. (USPN 6,416,857) in view of Shadle et al. (USPN 6,270,122) as applied to claims 1, 3, 4, 6, 7, 10 – 13, 15, 16, 18, 19, 21, 22, 24 and 26 – 28 above, and further in view of Mocilnikar et al. (USPN 5,346,259).

Wright et al., as modified with Shadle et al., disclose a tamper indicating device used in combination with an object having secured information comprising a backing having a first side and a second side, wherein the backing comprises a first phase and a second phase, wherein the

Art Unit: 1794

backing has a first level of light diffusion, and when a peeling force is applied to the backing, the backing fractures and has a second level of light diffusion that is a higher level of light diffusion than the first level of light diffusion a flood coat applied to the second side of the backing, an adhesive layer bonded to the flood coat, having a flood coat defining a window therein, a mask applied to the tamper indicating device and the mask being in partial or whole registration with the window in the flood coat. However, the modified Wright et al. fail to disclose the security marking has the same color as the flood coat.

Mocilnikar et al. teach an anti-theft label wherein the security marking has the same color as the flood coat (Column 4, lines 34 – 43) for the purpose of having a label wherein the label and information become unusable due to the damaged label (Column 3, lines 19 – 29).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the security marking has the same color as the flood coat in the modified Wright et al. in order to have a label wherein the label and information become unusable due to the damaged label as taught by Mocilnikar et al.

Response to Arguments

7. Applicant's arguments filed October 17, 2007 have been fully considered but they are not persuasive.

Art Unit: 1794

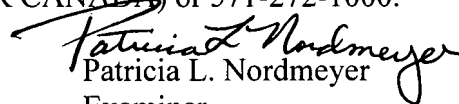
In response to Applicant's arguments that the prior fails to disclose at least partially physically separated from the window upon application of the peeling force in a direction substantially away from the window, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. Also, the claim limitation is unclear, which render the claims vague and indefinite. It is unclear what the Applicant is trying to claim, the tamper indicating device or the intermediate use of the tamper indicating device. The claim seems to be claiming the label before and after use.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571) 272-1496. The examiner can normally be reached on Mon.-Thurs. from 10:00-7:30 & alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena L. Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Patricia L. Nordmeyer
Examiner
Art Unit 1794

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